

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

HERMAN JOHN VANDONKELAAR,

Defendant-Appellee.

UNPUBLISHED

January 4, 2007

No. 265897

Muskegon Circuit Court

LC No. 87-028984-FH

Before: Meter, P.J., and O’Connell and Davis, JJ.

METER, J. (*dissenting*).

I respectfully dissent. I would reverse the trial court’s decision to set aside defendant’s conviction.

As noted by the majority, the trial court stated that although initially it had been prepared to deny defendant’s application based on the nature of the offense and the letter from the victim, after reviewing the plea transcript, and in particular the statement from the prosecutor at that time that his office was not predisposed to oppose an expungement in the future, the court had determined that the application should be granted. The court stated that it could not “see anything that’s happened, that has transpired [in the years] since that time, that would cause anyone to be predisposed to oppose it. I haven’t heard anything.”

In my opinion, the court’s opinion evidences a clear abuse of discretion. The court erred in essentially stating that there was no evidence to support an opposition to defendant’s application. First, the victim’s letter indicated that the victim strenuously opposed the application and that she still experienced difficulty in dealing with defendant’s actions. Second, while it is true that no evidence showed that defendant had engaged in any criminal behavior following his conviction, that positive point was greatly diminished by defendant’s (1) assertion that he did not believe that the actions in which he repeatedly engaged with the victim were sexual in nature, (2) emphasis on the role that alcohol played in his actions, and (3) suggestion that the victim’s continuing difficulties were likely not related to his actions. These remarks indicated that defendant refused truly to take responsibility for his actions.

In granting the application to set aside defendant’s conviction, the court explicitly relied on the prosecutor’s statement at the time of the plea and implicitly relied on defendant’s lack of criminality since the plea. However, these facts clearly did not outweigh the emphatic desire of the victim that the crime not be expunged or defendant’s refusal truly to accept responsibility for

his actions. I conclude that the setting aside of defendant's conviction was not consistent with the public welfare, see MCL 780.621(9), and that the trial court abused its discretion in granting defendant's application.

I would reverse.

/s/ Patrick M. Meter